

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Marc Krüger

Art Unit: TBA

Application No.: TBA

Examiner: TBA

Filed: Herewith

Conf. No.: TBA

For: PORTION CAPSULE HAVING AN IDENTIFIER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

INFORMATION DISCLOSURE STATEMENT

Applicant submits this statement in accordance with its duty of disclosure under 37 C.F.R. §§ 1.56, 1.97, and 1.98. The submission made herewith is in no way intended as an admission that the cited items constitute material prior art or otherwise would render the claims unpatentable in any way. The submission also is in no way intended to substitute for the Examiner's own independent investigation.

Form PTO/SB/08a is submitted herewith. Copies of foreign patent documents and non-patent literature have not been provided due to their presence in the parent application to this application (see MPEP 609.02(A)(2)), and Applicant notes that this section requires the Examiner to consider all of the references previously submitted to the USPTO even if not listed in any Information Disclosure Statement filed in this application. Applicant is resubmitting these references on the attached form PTO/SB/08a so that all of the references are listed on the face of the patent. However, to the extent that any references have been inadvertently overlooked, or otherwise are not resubmitted on this form, Applicant respectfully requests consideration of the previously submitted references as is set forth in MPEP 609.02(A)(2) and inclusion of such references on the face of the patent. Applicant respectfully solicits the Examiner's consideration of the cited references and entry thereof into the record of this application.

This Information Disclosure Statement is being submitted prior to the mailing of a first Office Action or Notice of Allowance. No fees are believed to be due; however, if any fee is due with the filing of this paper, please charge the amount to Deposit Account 50-1097.

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)	Application Number	TBA
	Filing Date	Herewith
	First Named Inventor	Marc Krüger
	Art Unit	TBA
	Examiner Name	TBA
	Attorney Docket Number	1859.029USC4 (KRÜ0022-WO-US-T4)

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	First Named Inventor	Marc Krüger
	Art Unit	TBA
	Examiner Name	TBA
	Attorney Docket Number	1859.029USC4 (KRÜ0022-WO-US-T4)

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	Examiner Name	TBA
	Attorney Docket Number	1859.029USC4 (KRÜ0022-WO-US-T4)

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NON-PATENT LITERATURE DOCUMENTS			
Examiner Initial*	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ⁵
	1.	Rawle, Alan, "Particle Sizing – An Introduction" 2012; Silver Colloids, Edition or volume on Colloidal Silver	
	2.	Decision on Appeal before the Patent Trial and Appeal Board for Appeal No. 2017-007984 dated May 10, 2019.	
	3.	Notice of Opposition regarding EP3023362 filed July 30, 2018.	
	4.	Search Report for CN201180035944 mailed September 25, 2014.	
	5.	First Office Action for Application No. CN201180035944 mailed October 10, 2014.	
	6.	Second Office Action for Application No. CN201180035944 mailed April 21, 2015.	
	7.	Third Office Action for Application No. CN201180035944 mailed November 12, 2015.	

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	Attorney Docket Number	1859.029USC4 (KRÜ0022-WO-US-T4)

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	21.	Search Report and Written Opinion for Application No. EP 15197336.9 dated April 4, 2016 (EP3023362)	
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	27.	Search Report for Application No. JP 2016-032427 dated November 21, 2016. (JP2016163691)	
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	Attorney Docket Number	1859.029USC4 (KRÜ0022-WO-US-T4)

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	31.	Office Action for Application No. JP 2017-034769 dated January 30, 2018. (JP2017148511)	
	32.	Office Action for Application No. KR 10-2013-7004356 dated April 5, 2018. (KR20137004356)	
	33.	Office Action for Application No. 10-2017-7019956 dated April 10, 2018. (KR20170087528)	

EXAMINER SIGNATURE			
Examiner Signature		Date Considered	
*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.			



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/438,818	06/12/2019	Marc Krüger	1859.029USC4	8813
25215	7590	04/30/2020	EXAMINER	
The Dobrusin Law Firm P.C. 29 W. Lawrence Street, Ste. 210 SUITE 210 PONTIAC, MI 48342			SMITH, CHAIM A	
			ART UNIT	PAPER NUMBER
			1792	
			NOTIFICATION DATE	DELIVERY MODE
			04/30/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dobrusin_PAIR@firsttofile.com
patmail@patentco.com
rmasquelier@patentco.com

Office Action Summary

Application No.

16/438,818

Applicant(s)

Krüger, Marc

Examiner

CHAIM A SMITH

Art Unit

1792

AIA (FITF) Status

No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

- 5) ☒ Claim(s) 1-9 is/are pending in the application.
5a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) _____ is/are allowed.
- 7) ☒ Claim(s) 1-9 is/are rejected.
- 8) ☒ Claim(s) 1-9 is/are objected to.
- 9) ☐ Claim(s) _____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) ☒ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 12 June 2019 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

- a) ☒ All b) ☐ Some** c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)
Paper No(s)/Mail Date _____.
- 3) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 4) ☐ Other: _____.

IPR2023-00485

DETAILED ACTION

1. The present application is being examined under the pre-AIA first to invent provisions.

Election/Restrictions

2. Claim 9 is noted to contain no method steps. At this time, restriction has not been required between the product claims 1 – 8 and the method claim 9 because the method claim does not recite any significant manipulative steps and is therefore considered as part of the product claims. Applicant is advised that if the method claim is amended to contain significant method steps, any such claims will be subject to restriction based on original presentation.

Information Disclosure Statement

3. The Examiner acknowledges receipt of the lengthy information disclosure statement filed 12 June 2019. There is no requirement that applicants explain the materiality of English language references, however the cloaking of a clearly relevant reference in a long list of references may not comply with applicants' duty to disclose, see Penn Yan Boats, Inc. v. Sea Lark Boats, Inc., 359 F. Supp. 948, aff'd 479 F. 2d. 1338. There is no duty for the Examiner to consider these references to a greater extent than those ordinarily looked at during a regular search by the Examiner. Accordingly, the Examiner has considered these references in the same manner as references encountered during a normal search of Office search files.

4. With regard to the numerous IDS submissions, applicants are invited to indicate the relevance of the submissions to the claims. Particularly with regard to the various examination and opposition reports which were submitted. Without claim listings the

examiner is unable to determine how the claims in the reports relate to the claims under examination.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the features canceled from the claims:

“the identifier is a barcode which is provided on that side of the peripheral region of the basic element which is directed away from the membrane” as recited in claim 1;

the capsule characterized in that “it has an insert element with an identifier” as recited in claim 3;

if the capsule is to have two different identifiers as claim 3 would appear to recite then both identifiers in the same capsule must be shown;

“the outer circumference of a flange has a plurality of channels” as recited in claim 4;

6. No new matter should be entered.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include reference characters associated with the missing features of the drawings listed above. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be

labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

8. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

9. Color photographs, in this case grey scale, and color drawings are not accepted in utility applications unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any

10. Applicant has provided figures 19 – 22 as what appear to be black and white photographs. Black and white photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the

only practicable medium for illustrating the claimed invention which is not the case in the present application therefore applicant is required to submit the figures as drawings.

Specification

11. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no antecedent basis in the specification for “the identifier is a barcode which is provided on that side of the peripheral region of the basic element which is directed away from the membrane” as recited in claim 1, the capsule characterized in that “it has an insert element with an identifier” as recited in claim 3, “the outer circumference of a flange has a plurality of channels” as recited in claim 4.

12. The specification is objected to because it fails to include any reference characters associated with the missing features not found in the drawings, that is “the identifier is a barcode which is provided on that side of the peripheral region of the basic element which is directed away from the membrane” as recited in claim 1; the capsule characterized in that “it has an insert element with an identifier” as recited in claim 3; “the outer circumference of a flange has a plurality of channels” as recited in claim 4.

13. Appropriate correction is required.

14. The claims are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines double spaced on good quality paper are required. See 37 CFR 1.52(b).

Claim Rejections - 35 USC § 101

15. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 9 is rejected under 35 U.S.C. 101 because it is the improper definition of a process as there is no specific process steps in the claim.

Claim Rejections - 35 USC § 112

16. The following is a quotation of 35 U.S.C. 112(b):

(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

17. Claims 3 and 9 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

18. Regarding claim 3 it is unclear how many identifiers are to be present. Claim 1 recites a single serve capsule to have an identifier which is a barcode provided on the side of the peripheral region of the basic element which is directed away from the membrane. Claim 3 further recites the capsule “has an insert element with an identifier”. It is unclear if this to be a completely separate identifier or somehow related to the identifier recited in claim 1. Further it is unknown what type of element or identifier associated therewith would be required to be present in the single serve

capsule. There is no disclosure in applicant's specification of said insert element with an identifier and therefore the ordinarily skilled artisan would not know what is required to practice the invention.

19. Regarding claim 9, claim 9 is indefinite because it merely recites a use without any active, positive steps delimiting how this use is actually practiced. *Ex parte Erlich*, 3 USPQ2d 1011 (Bd. Pat. App. & Inter. 1986).

Claim Rejections - 35 USC § 103

20. In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

21. The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

23. Claims 1 and 2 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Ruchonnet WO 2005/044067.

24. Regarding claims 1 and 2, Ruchonnet discloses a single serve capsule (receptacle 3) capable of making a beverage (coffee) (translation, page 3, paragraph 4), having a basic element with a cavity, in which a raw beverage material (coffee) (page 3, paragraph 4) is provided, the capsule has a peripheral region (cylindrical) which is provided on the basic element, and the cavity being closed by a membrane (upper perforable part), which is fastened on the peripheral region of the basic element, wherein the capsule has an identifier (information readable), which makes it possible to individualize the respective single-serve capsule (translation page 1, paragraph 11), characterized in that the identifier is a barcode which is provided on that side of the peripheral region of the basic element which is directed away from the membrane (translation page 2, paragraph 6). Further regarding claim 2, Ruchonnet discloses the sealing surface would be provided on the peripheral region which is the flange (translation page 3, paragraph 11, fig. 6 illustrates).

25. Claim 3 is rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Ruchonnet WO 2005/044067 in view of Bucher WO 2011/000723.

26. Claim 1 differs from Ruchonnet in the capsule having an insert element with an identifier.

27. Bucher discloses a single serve capsule capable of making a beverage having a basic element with a cavity, in which a raw beverage material (coffee) is provided. The capsule has a peripheral region which is provided on the basic element, and the cavity is closed by a membrane, which is fastened on the peripheral region of the basic

element, wherein the capsule has an identifier, which makes it possible to individualize the respective single-serve capsule. Buchner further discloses the capsule would have an insert with an identifier (element 8) positioned within the capsule (page 19, paragraph 1, fig. 9). Bucher is providing an insert with an identifier for the art recognized function of protecting the identifier from damage when being inserted into the machine which is believed to be applicant's reason for doing so as well. To therefore modify Ruchonnet and provide an insert with an identifier as taught by Buchner would have been obvious to the ordinarily skilled artisan.

28. Claim 9 is seen to be the obvious use of the single serve capsule to make a hot beverage since the capsule would obviously have to be placed into a machine with an identifier reader to read said identifier in order to further make a hot beverage.

29. Claims 4 – 8 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Sweeney et al. US 2002/0020659.

30. Regarding claim 4, Sweeney discloses a single serve capsule capable of making a beverage (coffee) which has an essentially frustoconical or cylindrical basic element with a cavity for accommodating a raw beverage material (coffee). There is a membrane (piercable lid) which closes the cavity (paragraph [0004]), characterized in that the basic element has a wall region, wherein the basic element also has, on that side of the single-serve capsule which is directed away from the membrane, a base region, wherein the wall region, or the outer circumference of a flange has a plurality of channels (flutes) (paragraph [0011] and fig. 1 – 3).

31. Regarding claim 5 and recitations beginning “the channels realize an identifier, which makes it possible to individualize the single-serve capsule” these are seen to be recitations regarding the intended use of the channels.

32. In this regard applicant’s attention is invited to MPEP 2114 which states that “an apparatus must be distinguished from the prior art in terms of structure rather than function”. That is to say, apparatus claims cover what a device is, not what a device does. If the body of a claim fully and intrinsically sets forth all the limitations of the claimed invention, and then further limitations merely state, for example, the purpose or intended use of the invention, rather than any distinct structural definition of any of the claimed invention’s structural limitations, then any limitations regarding the intended use of the device are of no significance to claim construction. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim which Sweeney obviously does. Further, if the prior art structure is capable of performing the intended use, then it meets the claim.

33. It is The Office’s position that the further limitations do not state any distinct definition of any of the claimed invention’s limitations and further that the purpose or intended use, i.e. “the channels realize an identifier, which makes it possible to individualize the single-serve capsule”, recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art, that is Sweeney and further that the prior art structure, which is identical and/or obvious in view

of the prior art to that set forth in the present claims is capable of performing the recited purpose or intended use.

34. Regarding claim 6, Sweeney discloses that at least some of the channels, and at least in a sub-region in a plane parallel to the main plane along which the membrane extends, have a gear-wheel-like contour (fig. 1 – 3).

35. Regarding claim 7, Sweeney discloses the channels are designed such that the wall region is stiffened by means of the channels and the channels provide for turbulence of an extraction liquid flowing in the cavity (paragraph [0050] and [0051]).

36. Regarding claim 8, Sweeney discloses the cavity contains a filter element which subdivides the cavity into a first region for accommodating the raw beverage material and into a second region for accommodating a beverage extract (paragraph [0045] fig. 2 and 3).

Conclusion

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM A SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 09:00-18:00.

38. Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to telephone the Examiner.

39. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Erik Kashnikow can be reached on (571) 270-3475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

40. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <https://ppair-my.uspto.gov/pair/PrivatePair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C.S./
Chaim Smith
Examiner, Art Unit 1792
13 April 2020

/ERIK KASHNIKOW/
Supervisory Patent Examiner, Art Unit 1792